

ARTICLE VI. STORM WATER POLLUTION CONTROL

DIVISION 1. GENERAL PROVISIONS

Sec. 12-115. Purpose and policy.

(a) This article sets forth requirements for the control of pollutants that are or may be discharged to the public storm drain system. The purpose is to improve the quality of storm water discharges and to enable the city to comply with all applicable state and federal laws, including but not limited to, the Clean Water Act (33 United States Code § 1251 et seq.), the National Pollutant Discharge Elimination System Regulations (40 Code of Federal Regulations Part 122), and the Arizona Pollutant Discharge Elimination System Regulations (Arizona Administrative Code, Title 18, Chapter 9, Article 9). The objectives of this article are:

- (1) To reduce the discharge of pollutants from our public storm sewer system into receiving waters, waterways, and groundwater;
- (2) To control the discharge to the public storm drain system resulting from spills, dumping, or disposal of materials other than storm water;
- (3) To enable the city to comply with the conditions of its National Pollutant Discharge Elimination System storm water permit or Arizona Pollutant Discharge Elimination System storm water permit;
- (4) To prevent discharges that could cause or contribute to damage to the public storm drain system;
- (5) To promote the proper management of hazardous materials and other wastes to prevent their discharge into the public storm drain system;
- (6) To reduce pollutants in storm water to the maximum extent practicable; and
- (7) To protect the public health and the environment.

(b) This article establishes discharge prohibitions; authorizes the identification of controls to reduce the discharge of pollutants that may be required; provides for necessary inspections, monitoring, compliance, and enforcement activities; and establishes administrative review procedures.

(Ord. No. 98.34, 08-13-98; Ord. 2004.13, 4-29-04)

Sec. 12-116. Administration.

Except as otherwise provided herein, the water utilities manager shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the water utilities manager may be delegated by the water utilities manager to other city personnel, but remain the responsibility of the water utilities manager.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01)

Sec. 12-117. Abbreviations.

The following abbreviations, when used in this article, shall have the designated meanings:

ADEQ - Arizona Department of Environmental Quality

AZPDES - Arizona Pollutant Discharge Elimination System

CFR - Code of Federal Regulations

EPA - United States Environmental Protection Agency

NPDES - National Pollutant Discharge Elimination System

(Ord. No. 98.34, 08-13-98; Ord. No. 2004.13, 4-29-04)

Sec. 12-118. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated:

Alternative retention criteria area means the following areas:

- (1) The area bounded by the north right-of-way of the 202 freeway west of the Union Pacific Railroad and west of Mill Avenue (north of Washington/Curry Road) and by the city limits on the north and west.
- (2) On the south side of Tempe Town Lake, the area bounded by the north right-of-way of Rio Salado Parkway, the south bank of the Tempe Town Lake, the north prolongation of Hardy Drive, and the Karsten Golf Course at ASU, and excluding Arizona State University-owned property. On the north side of Tempe Town Lake, the area bounded by the south right-of-way of the 202 freeway, the north bank of the Tempe Town Lake, and the southern prolongation of College Avenue.
- (3) The area bounded by the north right-of-way of University Drive, the Union Pacific Railroad, the south right-of-way of Rio Salado Parkway, the west right-of-way of College Avenue and wrapping around the Tempe Butte on the north and east side of the old railroad spur, and the property east of College Avenue known as the Arizona National Guard property.

Arizona Department of Environmental Quality, or ADEQ, means the state agency charged with primary enforcement of the federal Clean Water Act.

AZPDES storm water permit means an Arizona pollutant discharge elimination system permit issued by the ADEQ which authorizes the discharge of storm water pursuant to the Clean Water Act § 402.

City means the City of Tempe.

Clean Water Act means the Federal Water Pollution Control Act, as amended, 33 United States Code § 1251 et seq.

Manager means the water utilities manager who is hereby charged with certain duties and responsibilities by this article, or other city personnel designated by the water utilities manager to act on his/her behalf.

NPDES storm water permit means a National Pollutant Discharge Elimination System permit issued by the EPA which authorizes the discharge of *storm water* pursuant to the Clean Water Act § 402.

Person means any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

Pollutant means any solid, liquid, gaseous, or other substance that can alter the physical or chemical properties of water including, but not limited to: fertilizers, solvents, sludge, petroleum and petroleum products, solid waste, garbage, biological materials, radioactive materials, sand, dirt, animal wastes, acids, and bases.

Pollution means the presence of a pollutant(s) on land or in storm water.

Premises means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Public storm drain system means all or any part of the storm drains, ditches, pipes, graded areas, and gutters located within public easements, public rights-of-way, public parks, streets, roads, highways, common areas, or required onsite retention areas, or publicly owned real property that are used for collecting, holding, or conveying storm water.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that can cause pollution.

Storm water means any flow occurring during or following any form of natural precipitation and resulting from such precipitation.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Secs. 12-119 to 12-124. Reserved.

DIVISION 2. PROHIBITIONS AND CONTROLS TO REDUCE THE DISCHARGE OF POLLUTANTS IN STORM WATER

Sec. 12-125. Prohibitions of non-storm water discharges to the public storm drain system; exemptions.

(a) Unless expressly authorized or exempted by this article, no person shall cause or allow the release to a public right-of-way or public storm drain system of any substance that is not composed entirely of storm water.

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(b) Unless expressly authorized or exempted by this article, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to storm water.

(c) The following discharges are exempt from the prohibition set forth in subsections (a) and (b) of this section provided they are not significant sources of pollutants to waters of the United States:

- (1) The prohibition on discharges shall not apply to any discharge regulated under a NPDES OR AZPDES permit issued to the discharger under the authority of the EPA OR ADEQ, respectively.
- (2) The prohibition on discharges shall not apply to any discharge that is eligible for coverage under a general NPDES or AZPDES permit issued under the authority of EPA or ADEQ, respectively.
- (3) Discharges caused by a person from any of the following activities:
 - a. Water line flushing and other discharges from drinking water sources;
 - b. Lawn watering;
 - c. Irrigation water;
 - d. Diverted stream flow;
 - e. Rising groundwater;
 - f. Uncontaminated groundwater infiltration;
 - g. Uncontaminated pumped groundwater;
 - h. Foundation and footing drains;
 - i. Water from crawl space pumps;
 - j. Air conditioning condensation and evaporative cooler run-off;
 - k. Natural springs;
 - l. Individual residential car washing;
 - m. Flows from riparian habitats and wetlands, as those areas are designated under applicable federal and state laws;
 - n. Dechlorinated swimming pool discharges;

- o. Flows resulting from fire fighting activities;
- p. Dust control watering; or
- q. Any other activity that is exempted under the City's NPDES OR AZPDES storm water permit.

(d) No person shall discharge to a publicly owned right-of-way or the public storm drain system any exempted discharge under subsection (c) paragraph 2 of this section if the water utilities manager identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.

(e) No person shall discharge to the public storm sewer system where such a discharge would result in or contribute to a violation of the NPDES or AZPDES storm water permit issued to the city, either separately considered or when combined with other discharges. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.

(f) No person shall establish, use, maintain, or continue any connection to the public storm sewer system which has caused or will likely cause a violation of this section. Any connection that was permitted or authorized by a governmental entity with jurisdiction and authority, will be discontinued upon thirty (30) days written notice by the water utilities manager to: (a) the last known address of the owner of the property and by posting on the property; or (b) the person maintaining the connection. This prohibition is retroactive and shall apply to any connection that was made in the past, regardless of whether it was made under a permit or other authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of the connection.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. 2004.13, 4-29-04)

Sec. 12-126. Cleanup and notification requirements.

(a) As soon as any owner or operator has actual or constructive knowledge of any release which may result in pollutants or discharges that are not in compliance with this article entering the public storm drain system, such person shall promptly take all necessary steps to ensure the discovery of the source and extent and proceed with containment and cleanup of such release.

(b) In addition to the requirements contained in subsection (a) of this section, such person shall notify the water utilities manager of the release in both of the following manners:

- (1) By telephone within twenty-four (24) hours or by 12:00 noon of the next work day if knowledge is received on a weekend or holiday; and
- (2) In writing within three (3) days of receiving knowledge of the release.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01)

Sec. 12-127. Practicable best management practices.

(a) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in pollutants entering the public storm drain system or affecting the public storm drain system, shall undertake all practicable best management practices identified by the water utilities manager to minimize such pollutants. Such measures shall include the requirements imposed by all of the following:

- (1) This chapter;
- (2) Chapter 33, Article VI (Water Wasting); § 29-20 (discharge of water from private premises); and § 19-50 (hauling waste fill or waste excavation material); and
- (3) Any written guidelines which may be developed or referenced for general use by the water utilities manager.

(b) All owners/developers of lots, plots, or parcels of land in the alternative retention criteria area who do not provide storage of sufficient volume to hold the total runoff from the two-year design storm shall provide on-site pollution prevention best management practices which will provide storm water pollutant removal or prevention equivalent to that which would be achieved using on-site storage. Best management practice plans shall be submitted to the water utilities manager for approval prior to construction.

(c) If a practicable best management practice is required by the water utilities manager, the person receiving the notice of such a requirement may petition the water utilities manager to reconsider the application of the practicable best management practice to the facility or the activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The water utilities manager will act within thirty (30) days on the request.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Sec. 12-128. Construction sites.

(a) Any person performing construction shall use all practicable best management practices identified by the water utilities manager to minimize pollutants and sediment from leaving the construction site. This is in addition to what may be required in § 19-50 (hauling waste fill or waste excavation material) of the Tempe City Code. At a minimum, the person shall do both of the following:

- (1) Not cause or contribute to a violation of § 12-125; and
- (2) Comply with any written guidelines which may be developed or referenced for general use by the water utilities manager.

(b) If a practicable best management practice is required by the water utilities manager, the person receiving the notice of such a requirement may petition the water utilities manager to reconsider the application of the practicable best management practice to the construction activity. The written petition must be received within ten (10) working days setting forth any reasons or proposed alternatives. The water utilities manager will act within thirty (30) days on the request.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Secs. 12-129 to 12-134. Reserved.

DIVISION 3. COMPLIANCE MONITORING

Sec. 12-135. Inspection and sampling; right of entry.

(a) Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the city shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this article. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the city in determining compliance with the requirements of this article. All persons shall allow such activities under safe and nonhazardous conditions with a minimum of delay.

(b) In addition to those activities described in subsection (a) of this section, authorized city employees shall engage in monitoring necessary to ensure compliance with this article. The water utilities manager may establish on premises such devices as the water utilities manager reasonably determines are necessary to conduct sampling or metering operations. Such devices shall be installed so as to minimize the impact on the owner and occupant of the premises. During all inspections as provided in subsection (a) of this section, authorized city employees may take any samples necessary to aid in the pursuit of the inquiry or in the recordation of the activities on the premises.

(c) The water utilities manager may order any person engaged in any activity or owning or operating on any premises which may cause or contribute to discharges of pollutants to the public storm drain system in violation of this article to undertake such monitoring activities and analyses and furnish such reports as the water utilities manager reasonably may specify. The costs of such activities, analyses, and reports shall be borne by the recipient of the order.

(d) If the water utilities manager has been refused access to any premises, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect, interview, copy, photograph or sample as part of an inspection and sampling procedure of the city designed to determine compliance with the requirements of this article or any related laws or regulations, or to protect the environment and the public health, safety and welfare of the community, then the water utilities manager may seek issuance of a search warrant from the municipal court of the city. The water utilities manager may, in addition, obtain an "inspection warrant" pursuant to chapter 34 of this code.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Secs. 12-136—12-144. Reserved.

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DIVISION 4. ENFORCEMENT

Sec. 12-145. Purpose.

The purpose of this division is to ensure compliance with practicable best management practices required by the water utilities manager, to cease/discontinue pollutant discharges, to provide for civil penalty actions in municipal court, or to institute actions through the city attorney in the appropriate court for civil or criminal enforcement of this article.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01)

Sec. 12-146. Notice of violation.

When the water utilities manager finds that any person has violated, or continues to violate, any provision of this article, or any related laws or regulations, the water utilities manager may serve upon that person a written notice of violation. The person, within ten (10) working days of the receipt of this notice, must provide in writing to the water utilities manager an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions to be taken by the person in violation to prevent subsequent violations. Submission of this plan in no way relieves the person of liability for any violations in the notice or that occurred before or after receipt of the notice of violation nor limits the water utilities manager's authority to take further enforcement actions. Nothing in this section shall limit the authority of the water utilities manager to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the water utilities manager may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01)

Sec. 12-147. Consent orders; best management practice.

The city may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this article and shall be judicially enforceable.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

Sec. 12-148. Cease and desist orders.

(a) When the water utilities manager finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the water utilities manager may issue an order to the person directing them to cease and desist all such violations and direct the person to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation.

(b) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the water utilities manager issued pursuant to this division shall constitute a violation of this article. (Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01)

Sec. 12-149. Civil penalties.

(a) In addition to any other enforcement authority contained in this article, the city may issue a civil citation to any person who has violated, or continues to violate, any provision of this article or any related laws or regulations. The form of the citation shall be established by the city attorney.

(b) If the defendant fails to appear as directed on the citation, the court upon request of the city, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a default penalty not to exceed fifty dollars (\$50).

(c) The civil penalty for violating this article shall be an amount not to exceed three hundred dollars (\$300).

(d) All civil hearings under this article before the Tempe Municipal Court shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The Rules of Evidence do not apply, except for any rules or statutes relating to privileged communications. If the allegation in the citation is denied, the city is required to prove the violation by a preponderance of the evidence. The court is authorized to make such orders as may be necessary or appropriate to fairly and efficiently decide the case at hand. An appeal from the judgment of the court may be taken in the same manner as civil traffic appeals. (Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.35, 8-8-02; Ord. No. 2004.13, 4-29-04)

Sec. 12-150. Injunctive relief.

When the water utilities manager finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the city may petition the Superior Court of Arizona, Maricopa County, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of any order or other requirement imposed by this article on activities of the person. The city may also seek such other action as is appropriate for legal or equitable relief. (Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

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Sec. 12-151. Criminal prosecution.

A person who willfully or negligently violates any provision of this article, or any related laws or regulations shall, upon conviction, be guilty of a class one misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500) per violation, per day, or imprisonment for not more than six (6) months, or both.
(Ord. No. 98.34, 08-13-98)

Sec. 12-152. Remedies non-exclusive.

The remedies provided for in this article are not exclusive. Each day's noncompliance constitutes a new violation. The city may take any, all or any combination of these actions against a noncompliant person.
(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)